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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/785,636
Filing Date: February 24, 2004
Appellant(s): DRAFT, ROGER

Eugene Rath
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 04/21/2006 appealing from the Office action mailed 04/27/2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

This appeal involves claims 1-13 and 18

Claim 18 is allowed. The Examiner was in error in objecting to claim 18 as is pointed out in section E of the Appeal Brief. As such, Claim 18 is not objected to but is in condition for allowance.

Claims 3-5 and 7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 14-17 are withdrawn from consideration as not directed to the elected invention.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

WordNet ® 2.0, © 2003 Princeton University – Definition of “cage”

4,365,590	RUGGIERI et al.	12-1982
2,220,436	ZIEGLER	11-1940

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 6 and 8-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Ruggieri et al., US Patent 4,365,590 (Ruggieri).

Ruggieri discloses a cage comprising a frame (12), a door (26) having a bottom portion and a top horizontal rod, a member attached to the frame along which the door rides and a cavity in the frame to receive the bottom portion (as best viewed in Figure 3). As can clearly be seen in Figure 1, the door (26) in the closed position is flush with the sidewall of the cage, as such, there is inherently a cavity located within the cage, else when the doors are closed, they would not be recessed or flush with the remainder of the cage walls.

Regarding claim 6, Ruggieri discloses at least one cradle attached to the frame to receive the bottom of the one door (note Figure 3 in which the rail mechanism acting as a cradle supports the bottom of the one door and is located near the top of the at least one opening).

Regarding claim 9, Ruggieri discloses a side grate (42) with a top member engaging the horizontal rod (Figure 3).

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Regarding claims 10 and 12, Ruggieri discloses two cradles (i.e. one connected to each sidewall).

Claims 1, 2, 6, 8-13 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Ziegler, US 2,220,436.

Ziegler discloses a frame that provides the general structure and shape of a cage defining at least one opening and a cavity (in which 33 resides) near the bottom of the cage, a door sized to fit in the opening (illustrated in figure 4) having a bottom and a top horizontal rod (38) and a member attached to the frame on which the rod lies. It is noted that Figure 5 illustrates a single exemplary location for which the door may be located. As grooves (27) and receiving channels (21) run the length of the structure, the door in the position closest to the opening is considered to be adjacent there to.

(10) Response to Argument

Claim 1- Ruggieri et al.

With respect to the argument by the Appellant that the Ruggieri et al. reference does not disclose a cavity near the bottom of the cage, or any cavity adapted to receive the bottom portion of the door, this is respectfully disagreed with. As is clearly seen in Figure 3 of the Ruggieri reference, the door (26) has a defined width. Figure 3 illustrates that the door is completely located within (i.e. flush with) the perimeter of the frame and as such, must inherently include a cavity having a width consistent with that of the door for the door to reside therein. The Ruggieri reference functions in the manner of a barrister bookcase in which the door assembly pivotally rotates in the front of the unit and when in the closed position, the door rests within a recessed cavity defined by the perimeter of the frame such that the door is capable of being flush with the exterior of the frame. It is this recess in which the door resides, which is clearly shown

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in Figure 3, which has been defined as the cavity. The Appellant has argued that the Ruggieri door abuts the partition wall. However, this is respectfully disagreed with. As is clearly seen in Figure 3, the door does not abut but resides within the frame structure. The door member of Ruggieri resides within this cavity along the entire length of the door. The cavity is located near the bottom of the cage and is adapted to receive the bottom portion of the door when the door is closed. As such, Ruggieri clearly meets the claim limitation of a cavity near the bottom of the cage that is adapted to receive the bottom portion of the at least one door when the door is closed. The Appellant has suggested that the Examiner may be referring to the pane of glass that is wrapped about its perimeter by a frame to construct the transparent doors. This is not the case. The reading of the Ruggieri reference was discussed in Paragraph 1 of the Final Office Action and the construction of the door was not discussed with respect to the interpretation of the Ruggieri reference.

Claims 6 and 8- Ruggieri et al.

As an initial point, the Appellant has summarized the argument with respect to Claim 6 stating, "Thus, there is no cavity in which the bottom of the door rests in the Ruggieri et al. structure". It is noted that Claim 6 is inclusive of the cavity as defined in Claim 1 which has been discussed above. However, the limitation specifically stated in Claim 6 is directed to a cradle attached to the frame near the top of the at least one opening which is adapted to receive the bottom of the at least one door. Ruggieri discloses the doorframe side panels resting upon the outer track surface 188 (column 10, line 8-9) with only the front panel of the doorframe (172) projecting from the front of the cage. The projection of a portion of the doorframe from the front of the cage does not preclude the Ruggieri reference from defining the claim limitation. The claim specifically calls for at least one cradle attached to the frame near the top of the at least one

opening, which is clearly disclosed in the Ruggieri reference, that is *adapted* to receive the bottom of the at least one door. As was discussed in the Final Office action, any position distal to the mid point of the door when in the vertical position may be construed as the bottom of the door. As the Ruggieri reference clearly discloses that substantially more than half of the door resides within the cradle, the Ruggieri reference is adapted to receive the bottom of the at least one door.

Claims 1 and 8 – Ziegler

With respect to the Appellant's arguments that Ziegler does not disclose a top horizontal rod that rides along a member attached to the frame, this is respectfully disagreed with. As was pointed out in Paragraph 2 of the Final Office Action, Ziegler clearly discloses a horizontal rod (38) that rides along a member (24) attached to the frame, via wheels (39). The fact that the horizontal rod of Ziegler does not physically engage the member (24) does not preclude the Ziegler reference from anticipating the claim as the limitation of Claim 1 merely states "a member attached to the frame along which the top horizontal rod of the at least one door rides when the at least one door is opened". The Ziegler reference clearly discloses that the horizontal rod (38) rides along the member (24).

The Appellant has argued that the word "cage" is positively recited in the claim language, and thus, must be considered a claim limitation. However, it is noted that the provided definition from the *American Heritage Dictionary* 227 (2d College ed. 1985) was not provided within the specification and the Appellant did not define within the specification that which the Appellant construed to be a cage. As such, one with skill in the art at the time the invention was made would look to any known definition to define the limitations of "cage". The Appellant has provided a single definition for the word "cage". However, as per *WordNet* ® 2.0, © 2003

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Princeton University, “cage” may also be defined as “something that restricts freedom as a cage restricts movement”. The Ziegler reference is directed to an enclosed structure and as such is defined as “something that restricts freedom”. As such, the Ziegler reference is maintained as disclosing a cage structure.

Claim 18

The Appellant is correct in that Claim 18 is not subject to a rejection and is not dependent upon a rejected base claim. Claim 18 is therefore considered allowable.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner’s answer.

For the above reasons, it is believed that the rejections should be sustained.


Respectfully submitted,

Kimberly Smith

Conferees:

Teri Luu *TL*

Robert Swiatek *RPS*


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PRIMARY EXAMINER